Supreme Court, U.S.
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No. 01-790

In The

Supreme Court of the United States

STATE OF IOWA and
IOWA DEPARTMENT OF PUBLIC SAFETY,

Petitioners,

v.

ROYCE L. ANTHONY, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Does application of the overtime provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. § 207(a)(1), to the States violate State sovereignty guaranteed by the Tenth Amendment of the United States Constitution?

PARTIES

The parties listed in petitioners' Petition for Writ of Certiorari is inaccurate. The respondents identified are all plaintiffs in the main action that was filed in the Iowa District Court for Polk County. However, the trial court's ruling on summary judgment affected only those persons identified in the caption of the Iowa Supreme Court's ruling. (Petitioners' App. p. 1) Those were the only persons who were parties to the appeal before the Iowa Supreme Court. Those persons are:

> Royce L. Anthony, Kenneth J. Arduser, Richard D. Aringdale, Fred O. Burger, Steven R. Conlon, Joseph L. Diaz, Loren E. Dykeman, James K. Ehresman, Robert W. Elliott, Blaine Goff, Terrance Hoil, McKinnely Jontz, Jr., Ronald G. Makin, Larry G. Mathers, George H. Mayer, Timothy P. McDonald, Lee J. Meinert, Larry L. Noble, Bradford J. Thompson, Earl E. Usher, Jon R. Wilson, and Charles R. Wood

The above-named persons are the only proper parties before this Court. The Court does not have jurisdiction to hear any matters affecting the remaining persons identified in the Petition for Writ of Certiorari as they were not parties to the proceedings before the Iowa Supreme Court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES ii

TABLE OF AUTHORITIES iv

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS 1

RESPONDENTS' BRIEF IN OPPOSITION 3

STATEMENT OF THE CASE 4

SUMMARY OF THE ARGUMENT 5

I. THE IOWA SUPREME COURT'S RULING IS CONSISTENT WITH DECISIONS OF THIS COURT 5

II. THE STATE OF IOWA IS LIABLE TO THE RESPONDENTS UNDER STATE LAW FOR UNPAID WAGES 7

CONCLUSION 9

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

Alden v. Maine, 527 U.S. 706 (1999).....5, 6

Auer v. Robbins, 519 U.S. 452 (1997).....6

Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).....5, 6, 8

New York v. United States, 505 U.S. 144 (1992).....5, 6

Printz v. United States, 521 U.S. 898 (1997).....5, 6

STATUTES

Iowa Code § 19A.9.....2, 7

Iowa Code § 4.1(20).....2, 7

Iowa Code § 91A.2.....1, 7

Iowa Code § 91A.8.....2, 7

REGULATIONS

581 I.A.C. § 1.1.....3, 7

581 I.A.C. § 4.11.....3, 7

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

In addition to the provisions petitioners identified, the following provisions would also be applicable to this matter:

I. Iowa Code § 91A.2

. . .

4. "Employer" means a person, as defined in chapter 4, who in this state employs for wages a natural person. An employer does not include a client, patient, customer, or other person who obtains professional services from a licensed person who provides the services on a fee service basis or as an independent contractor.

. . .

7. "Wages" means compensation owed by an employer for:

a. Labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation.

b. Vacation, holiday, sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.

c. Any payments to the employee or to a fund for the benefit of the employee, including but not limited to payments for medical, health, hospital, welfare, pension, or profit-sharing, which are due an employee under an agreement with the employer or under a policy of the employer. The assets of an employee in a fund for the benefit of the employee, whether such assets were originally paid into the fund by an employer or employee, are not wages.

II. Iowa Code § 91A.8:

When it has been shown that an employer has intentionally failed to pay an employee wages or reimburse expenses pursuant to section 91A.3, whether as the result of a wage dispute or otherwise, the employer shall be liable to the employee for any wages or expenses that are so intentionally failed to be paid or reimbursed, plus liquidated damages, court costs and any attorney's fees incurred in recovering the unpaid wages and determined to have been usual and necessary. In other instances the employer shall be liable only for unpaid wages or expenses, court costs and usual and necessary attorney's fees incurred in recovering the unpaid wages or expenses.

III. Iowa Code § 4.1(20)

Person. Unless otherwise provided by law, "person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

IV. Iowa Code § 19A.9

The director [of the Iowa department of personnel] shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter 17A. Rulemaking shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. The rules shall provide:

. . .

2. For pay plans covering all employees in the executive branch of state government, excluding

employees of the state board of regents, after consultation with the governor and appointing authorities, and consistent with the terms of collective bargaining agreements negotiated under chapter 20.

V. 581 I.A.C. § 1.1 (19A) **Definitions**

. . .

"Overtime" means those hours that exceed 40 in a workweek for which an employee is entitled to be compensated.

"Overtime covered class, employee, or position" means a class, employee, or position determined to be eligible for premium overtime compensation in accordance with the federal Fair Labor Standards Act.

. . .

VI. 581 I.A.C. § 4.11 (19A) **Overtime**

. . .

(2) *Eligible job classes.* An employee in a job class designated as overtime eligible shall be paid at a premium rate (one and one-half hours) for every hour in pay status over 40 hours in a workweek.

RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully request that the Court deny the petition for writ of certiorari. The Iowa Supreme Court ruled the State of Iowa has waived its immunity from suit and may be sued in the Iowa courts for wages owed to its employees. This ruling was based on Iowa's statutory and regulatory scheme and is a state issue, not a

federal constitutional issue. (Petitioner's Appendix at pp. 7-10) This holding is squarely in accord with Supreme Court precedent and there is no conflict with the United States courts of appeal or other state courts.

STATEMENT OF THE CASE

The respondents filed an action in the Iowa District Court for Polk County for wages. The petition was brought in four counts.[1] The first count alleges violations of the Fair Labor Standards Act. Count III alleges violations of Iowa Code Chapter 91A and Count IV is for breach of contract. (App. pp. 1-9). Respondents are seeking overtime compensation that is owed under the Iowa statutory and administrative scheme and the Fair Labor Standards Act.

The Iowa Supreme Court ruled the respondents are entitled to overtime compensation and instructed the trial court to enter summary judgment for respondents and proceed on the issue of damages only. (Petitioner's Appendix p. 15)

If this Court were to grant certiorari and rule as requested by petitioner's, respondents would be entitled to proceed with their state law claims under Counts III and IV of their petition.

[1] At the time of the filing of the Petition, the Plaintiffs were also seeking unpaid per diem as provided under Iowa Code § 80.8. This claim was later bifurcated from this action, tried to a jury and a verdict rendered in favor of the Plaintiffs.

SUMMARY OF THE ARGUMENT

In an attempt to obtain certiorari review, petitioners claim the Iowa Supreme Court's decision conflicts with recent decisions of this Court and that this Court has abrogated *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). First, this Court has not abrogated *Garcia*, but has reaffirmed its validity in numerous cases, including those the petitioners rely upon in their petition. Second, despite this Court's ruling in *Garcia*, or any other case addressing the states' sovereign immunity, the state of Iowa remains liable to the respondents for wages under the Iowa statutory and administrative scheme.

I.

THE IOWA SUPREME COURT'S RULING IS CONSISTENT WITH DECISIONS OF THIS COURT.

The petitioners question the continuing validity of *Garcia*, which upheld the extension of the Fair Labor Standards Act to state and local governments under the Commerce Clause and the Tenth Amendment, in light of this Court's decisions in *New York v. United States*, 505 U.S. 144 (1992), *Printz v. United States*, 521 U.S. 898 (1997), and *Alden v. Maine*, 527 U.S. 706 (1999). In all of these cases, this Court reaffirmed the validity of *Garcia* and the application of the Fair Labor Standards Act to the states.

In *New York* and *Printz*, the Court ruled Congress can regulate the states under the Commerce Clause, but its power to so regulate is limited by the Tenth Amendment. In summary, the Court ruled the states may be regulated, but the states cannot be compelled to regulate or enact a

legislative program. In reaching this decision, the Court repeatedly relied upon *Garcia* for the proposition Congress can regulate the states under the Commerce Clause. *See New York* at 156, 160, 162, 178 and *Printz* at 931 and 932.

In *Alden*, which addressed Eleventh Amendment immunity and involved a Fair Labor Standards Act claim against the state of Maine, the Court consistently referred to the Fair Labor Standards Act as a "**valid law**" as applied to the states. *Alden* at 754-55 ("The constitutional privilege of a State to assert its sovereign immunity in its own courts does not confer upon the State a concomitant right to disregard the Constitution or valid federal law."), 757, 758. In *Auer v. Robbins*, 519 U.S. 452 (1997), a unanimous decision, this Court did not even question the validity of *Garcia* but stated the application of the Fair Labor Standards Act to the states was a valid exercise of congressional power holding in "1985 we held that this exercise of power was consistent with the Tenth Amendment." *Id.* at 457 citing *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985).

Application of the Fair Labor Standards Act to the states was a valid exercise of congressional power under the Commerce Clause. This Court has not waivered from this holding in *Garcia*.

II.

THE STATE OF IOWA IS LIABLE TO THE RESPONDENTS UNDER STATE LAW FOR UNPAID WAGES.

The Petitioners have brought claims for violation of the Iowa Wage Payment Collection Act, Iowa Code Chapter 91A and for common law breach of contract.

Under the Iowa Wage Payment Collection Act, employees may bring actions against their employers for the failure to pay wages. Iowa Code § 91A.8. The Iowa Wage Payment Collection Act defines employers to include governmental entities. Iowa Code § 91A.2 and Iowa Code § 4.1(20).

The Iowa Code also provides that the director of the department of personnel shall promulgate rules providing for the payment of wages to the state's employees. Iowa Code § 19A.9. The Iowa department of personnel carried out its mandate under Iowa Code § 19A.9 and promulgated rules for the payment of overtime wages to its employees. Those rules adopted provisions of the Fair Labor Standards Act to determine which employees would be entitled to overtime compensation. Those rules provide that if an employee is non-exempt from overtime under the Fair Labor Standards Act, then the employee is entitled to receive overtime wages under the Iowa law. 581 I.A.C. §§ 1.1 and 4.11. The state of Iowa has incorporated by reference the provisions of the Fair Labor Standards Act into its contractual employment agreement with its employees.

Thus, if this Court were to grant the Petition and hold as requested by petitioners, petitioners would remain liable to the respondents for unpaid wages under state law.[2] This Court's ruling would be for naught.

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[2] Petitioners appeal to the Court by blaming their fiscal woes on this claim for overtime wages. First, the state has not paid these respondents any overtime since this suit was initially filed in federal court in 1994. Thus, it is difficult to understand how the State's liability for overtime in this matter has created its current budget problems. Second, the State's fiscal problems are due to tax cuts and overspending, not this claim. *State backs its way into Budget Crisis*, AP Wires 13:22:00, 10/21/01. In addition, the State of Iowa has a surplus fund in the amount of $592,000,000. 5/16/01 Wall St. J. B10, 2001 WL-WSJ 2863593.

The petitioners are misleading this court when they assert that if they did not have an obligation to pay overtime under the FLSA, it would not have to pay any overtime to its employees. Specifically, the petitioners claim "the FLSA has restricted the Department of Public Safety's use of its officers to such a degree that it is forced to send investigators home in the middle of major criminal investigations because it cannot afford overtime." (Petitioner's Brief at p. 9) This is a gross misstatement. The collective bargaining agreement for these Department of Public Safety employees has required the payment of overtime since 1983, prior to this Court's ruling in *Garcia*. The investigator that was sent home was covered by a collective bargaining agreement that required the State to pay him overtime. The FLSA did not restrict the Department's use of its employees, the Department restricted its own use of its employees through the collective bargaining process.

In addition, the Department of Public Safety receives millions of dollars each year from the federal government for the specific purpose of paying overtime to its law enforcement employees. The State of Iowa receives grant money to help in enforcing seat belt, child restraint, and laws for intoxicated

CONCLUSION

The Iowa Supreme Court's ruling holds the petitioners liable under state law. The Iowa Supreme Court's ruling is consistent with rulings of this Court and does not create any conflict among the states and the courts of appeal. The petition for writ of certiorari should be denied.

Respectfully submitted,

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drivers. This grant money is for the purpose of paying overtime to the State Troopers. Had the Department of Public Safety been paying these respondents overtime as required under state and federal law, it could have requested additional monies under the grants to pay that overtime, limiting the effects on the state's finances. *See, e.g.*, Governor's Traffic Safety Bureau, Iowa Department of Public Safety, Contract Number, Alcohol Incentive Grant, PAP 02-4110, Task 15.

APPENDIX

IN THE IOWA DISTRICT COURT
FOR THE STATE OF IOWA
IN AND FOR POLK COUNTY

CLIFFORD DANIEL RAPER, et. al., Plaintiffs, v. THE STATE OF IOWA and the IOWA DEPARTMENT OF PUBLIC SAFETY, Defendants.	NO. CL-68918 AMENDED AND SUBSTITUTED PETITION

COMES NOW the Plaintiffs, Clifford Daniel Raper, et. al., and all other similarly situated employees, by and through their attorney, R. Todd Gaffney and Pamela J. Prager, and for their first cause of action against Defendants, Department of Public Safety and State of Iowa, state as follows:

COUNT I

1. That Plaintiffs are employees of the Department of Public Safety and the State of Iowa and bring this action on behalf of themselves and other similarly situated employees of the said Defendants, to recover overtime compensation and interest thereon from May 3, 1991, liquidated damages, attorney fees, and costs under the provisions of 29 U.S.C.A. Section 216(b) (The Fair

Labor Standards Act of 1938, as amended), hereinafter referred to as the Act.

2. That all Plaintiffs are citizens of the United States and at all times material hereto are or were residents of the State of Iowa. At all times material hereto all Plaintiffs were or are employees of the Department of Public Safety and State of Iowa, and have been improperly classified by Defendants as employees that are exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended.

3. That the other similarly situated individuals represented by the named Plaintiffs are current or former employees of the Department of Public Safety and State of Iowa, who have been improperly classified by Defendants as employees that are exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended.

4. That the Department of Public Safety and State of Iowa are governmental entities within the territorial jurisdiction of this Court, having its principal office and its place of business located in Des Moines, Polk County, Iowa, and is an employer within the meaning of Section 3(d) of the Act. Defendants employ the Plaintiffs and other similarly situated employees.

5. That jurisdiction of this action is conferred on this Court by Section 16(b) of the Act, 29 U.S.C. § 216(b).

6. That at all times hereinafter mentioned, the Department of Public Safety and the State of Iowa are and have been "enterprises engaged in commerce" which have employees handling or otherwise working in goods

or materials that have been moved in or produced for commerce by any person and which is an activity of a public agency within the meaning of Section 3(s)(6) of the Act.

7. That during the period from May 3, 1991, to the present time, the Department of Public Safety and the State of Iowa, employed the Plaintiffs, and other similarly situated employees in connection with their employment with the Department of Public Safety and State of Iowa.

8. That Plaintiffs, and other similarly situated employees from May 3, 1991, have regularly rendered services to the Defendants in an amount exceeding that which is prohibited by federal law, and the Defendants have had full knowledge that the Plaintiffs are regularly rendering services in an amount that exceeds that which is prohibited by federal law.

9. That Defendants have failed and refused to compensate the Plaintiffs, and other similarly situated employees for such work in excess of that prohibited by law at rates not less than one and one-half times their regular rate of pay contained in the provision of Section 7(a) of the Act from May 3, 1991, and at all times thereafter.

10. That Defendants' failure and refusal to compensate Plaintiffs and other similarly situated employees for work in excess of that prohibited by federal law at rates not less than one and one-half times their regular rate of pay is willful.

11. That the records concerning the number of excess hours worked by Plaintiffs, and other similarly

situated employees and the compensation they receive, are in the exclusive possession and control of Defendants, and Plaintiffs are unable to state at this time the exact amount owing to each of them. Plaintiffs propose to obtain such information by appropriate discovery proceedings to be taken in this cause, and Plaintiffs will then amend their pleadings herein to set forth the amount due each of them.

WHEREFORE, Plaintiffs, and other similarly situated employees, pray that judgment be entered herein against the Department of Public Safety and the State of Iowa in the amount respectively due each Plaintiff, and other similarly situated employees of Defendants for overtime compensation and interest thereon from May 3, 1991, liquidated damages, interest and costs under the provisions of the Fair Labor Standards Act of 1938, as amended, and that this Court also allow reasonable attorney fees to be paid by Defendants.

COUNT II

COMES NOW the Plaintiffs, Clifford Daniel Raper, et. al., by and through their attorney, [sic] R. Todd Gaffney and Pamela J. Prager, and for their second cause of action against Defendant, Department of Public Safety, state as follows:

1. The Plaintiffs are, or were, patrol members and employees within the meaning of Iowa Code § 80.8.

2. The Defendant, the Department of Public Safety, was created by Iowa Code Chapter 80 and is responsible for carrying out the mandates of that Chapter.

3. Iowa Code § 80.8 provides for the payment of a "per diem" to all patrol members and employees, and in pertinent part, states as follows:

While on active duty each member shall also receive a flat daily sum as fixed by the commissioner with the approval of the governor for meals while away from the office to which the member has been assigned and within the member's district.

4. Since approximately 1980 or 1981, the Plaintiffs have not received a "per diem" as mandated by Iowa Code § 80.8.

WHEREFORE, Plaintiffs pray that judgment be entered herein against the Department of Public Safety in the amount respectively due each Plaintiff for per diem and interest thereon from January, 1980, interest, costs, reasonable attorney fees and any other relief the Court deems just and equitable.

COUNT III

COMES NOW the Plaintiffs, Clifford Daniel Raper, et. al., and all other similarly situated employees, by and through their attorney, [sic] R. Todd Gaffney and Pamela J. Prager, and for their third cause of action against Defendants, Department of Public Safety and State of Iowa, state as follows:

1. Plaintiffs replead all of the allegations contained in Counts I and II.

2. The Plaintiffs are employees of the State of Iowa as provided in Iowa Code Chapter 70.

3. The Plaintiffs are employees within the meaning of Iowa Code Chapter 91A.

4. The Defendants are employers within the meaning of Iowa Code Chapter 91A and are subject to the provisions of Iowa Code Chapter 91A as stated in Iowa Code Chapter 70.

5. The overtime compensation claimed by Plaintiffs in Count I of their Petition are wages within the meaning of Iowa Code Chapter 91A.

6. The per diem which is due Plaintiffs as alleged in Count II are wages and/or expenses incurred on behalf of the employer within the meaning of Iowa Code Chapter 91A.

7. That Defendants have failed and refused to compensate the Plaintiffs, and other similarly situated employees for overtime compensation and per diem as required by law.

8. That Defendants' failure and refusal to compensate Plaintiffs and other similarly situated employees for overtime compensation and per diem is intentional, willful and wanton entitling the Plaintiffs to liquidated damages as provided in Iowa Code § 91A.8.

WHEREFORE, Plaintiffs, and other similarly situated employees, pray that judgment be entered herein against the Department of Public Safety and the State of Iowa in the amount respectively due each Plaintiff, and other similarly situated employees of Defendants for overtime compensation and interest thereon from May 3, 1991, for per diem and interest thereon from August 26, 1994,

liquidated damages, interest and costs under the provisions of Iowa Code Chapter 91A and that this Court also allow reasonable attorney fees to be paid by Defendants.

COUNT IV

COMES NOW the Plaintiffs, Clifford Daniel Raper, et. al., and all other similarly situated employees, by and through their attorney, [sic] R. Todd Gaffney and Pamela J. Prager, and for their fourth cause of action against Defendants, Department of Public Safety and State of Iowa, state as follows:

1. The Defendants have entered into a written employment contract with the Plaintiffs.

2. The contract terms are governed in accordance with Iowa law as provided in Iowa Code Chapter 70A, Chapter 80 and Chapter 581 of the Iowa Administrative Code.

3. The Iowa Administrative Code provides that persons will be classified as exempt or non-exempt for overtime purposes in accordance with the Fair Labor Standards Act. Those persons who are classified as non-exempt in accordance with the Fair Labor Standards Act are entitled to overtime pay at the rate of one and one-half times their regular salary for all hours worked over 40 in any given work week. 581 I.A.C. §§ 1.1 and 4.6.

4. Iowa Code § 80.8 provides for the payment of a "per diem" to all patrol members and employees, and in pertinent part, states as follows:

While on active duty each member shall also receive a flat daily sum as fixed by the commissioner with the

approval of the governor for meals while away from the office to which the member has been assigned and within the member's district.

5. The Plaintiffs have complied with the terms of the employment contract.

6. The Defendants have breached the contract of employment.

7. The Plaintiffs have been damaged. The records concerning the number of excess hours worked and amount of per diem owing are in the exclusive possession and control of Defendants, and Plaintiffs are unable to state at this time the exact amount owing to each of them. Plaintiffs propose to obtain such information by appropriate discovery proceedings to be taken in this cause, and Plaintiffs will then amend their pleadings herein to set forth the amount due each of them.

WHEREFORE, Plaintiffs, and other similarly situated employees, pray that judgment be entered herein against the Department of Public Safety and the State of Iowa in the amount respectively due each Plaintiff, and other similarly situated employees of Defendants for damages due as the result of Defendants' breach of contract and

interest thereon from April 5, 1986, costs and any other relief the court deems just and equitable.

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